

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ALABAMA  
MOBILE DIVISION**

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Elena Mukhina :  
Plaintiff, :  
vs. : Civil Action No. 22-CV-361-JB-C  
Walmart Inc. :  
Defendant(s) :  
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**COMPLAINT**

**I. JURISDICTION AND VENUE.**

1. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-5(f) and 28 U.S. Code § 1331. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1331(b)(2) because it is where substantial part of the events or omissions giving rise to the cause of action herein occurred.

2. The Equal Employment Opportunity Commission ("EEOC") received a timely charge (EEOC Charge No. 425-2022-01008) filed by Elena Mukhina on or about 06/08/2022.

3. The official notice from the EEOC of the dismissal of charge and a right to sue was issued on 06/16/2022. Notice issued had the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute.

4. All conditions precedent to the filing of suit have been performed or have occurred.

## **II. PARTIES.**

5. Plaintiff is Elena Mukhina, residing currently at 13452 Rooster Ln, Foley, AL 36535.

6. Defendant is Walmart Inc. retail-variety stores with business address 702 Southwest 8th St Bentonville, AR 72716.

7. Walmart Inc. has a registered agent in the state of Alabama designated to receive legal correspondence on behalf of the company: C T Corporation System located at 2 North Jackson St., Suite 605, Montgomery, AL 36104.

8. Actions leading to a lawsuit happened at the Plaintiff's place of employment Walmart Inc. retail store No. 934 located at 27520 US Highway 98, Daphne, AL 36526.

### **III. LEGAL BASIS.**

9. Plaintiff Elena Mukhina is alleging that she had been discriminated against and harassed based on her national origin (Russian) by her supervisors, coworkers, and customers. That leaded to a constant emotional stress on the hostile and offensive workplace environment. Plaintiff received injuries and forced to be constructively discharged. Title VII of the Civil Rights Act of 1964, 42 U.S. Code § 2000e-2(a) makes it illegal to discriminate on the basis of national origin.

10. Plaintiff Elena Mukhina is alleging that she had been discriminated against based on her religious beliefs (Russian Folk Christianity) by her supervisor, who was failed to provide a reasonable accommodation for religious practice. Title VII of the Civil Rights Act of 1964, 42 U.S. Code § 2000e-2(a) makes it illegal.

11. Also, Plaintiff Elena Mukhina is alleging that she was retaliated against by the Defendant because she engaged in activity protected under Title VII such as making a reasonable complaint to supervisors about alleged discrimination; refusing to obey job assignments that Elena reasonably believes to be discriminatory; requesting reasonable accommodation; requesting members of management to take corrective actions against harassment in order to be safe and avoid offensive conduct and hostile work environment; filing a formal complaint

with Walmart Ethics Department to protect her rights. 42 U.S. Code § 2000e-3 makes it illegal.

#### **IV. FACTUAL ALLEGATIONS.**

##### **BACKGROUND**

12. The Plaintiff Elena Mukhina was born on 09/08/1969 in Russia, her native language is Russian, she lived in Russia for 47 years. Therefore, by national origin, she belongs to the social group "Russians".

13. In Russia, Elena had experience working as a salesperson in various retail stores, as well as a storekeeper at a factory. Later, she managed her own online store of jewelry and accessories for women.

14. In 2016, Elena was forced to leave her home country due to persecution. Together with her daughter Anastasiia Mukhina, Elena left for Costa Rica.

15. 03/14/2018 Elena was granted Asylum status in The USA in the Washington state.

16. Elena studied English in Russia at school and institute. In Washington State, she attended free ESL English courses at Highline College. 12/19/21 she completed online classes at Lone Star College, TX and was graduated a Certificate of Accounting Level I. But despite that fact, Elena has an elementary level of

English. She knows a lot of words but does not understand live speech well and cannot speak English.

17. In Washington state, Elena was looking for a job that did not require knowledge of English, so 11/20/18 she started employment with the Hampton Hotel as a housekeeper, and on 01/25/19 with the La Quinta Hotel.

18. From 08/24/18 until 07/29/19 Elena received medical treatment at HealthPoint Federal Way medical clinic for Segmental and somatic dysfunctions, including muscle tension and spasms.

19. Dr. Mason E Wallace ND, who treated Elena, believed that the hard work of the housekeeper interfered with recovery and reduced the effect of treatment.

20. Elena lived in an apartment complex at 1650 S 308th St Apt 2, Federal Way, WA 98003, that located next to Walmart #2571, so she was its regular customer. It was her favorite store. While visiting Walmart, Elena noticed that some of the employees did not speak English at all. Elena thought that she could also work there.

21. In March of 2019, Elena was hired by Walmart #2571 at 1900 S 314th St Federal Way, WA 98003, to the Apparel Department. She understood customers and employees well, completed job training by herself and even helped Russian-

speaking people get a fishing license several times as an interpreter from English to Russian and vice versa. Customers did not approach her often and mostly asked simple questions like: "Where is soap?"

22. Sometime on the second week, while Elena was working as a fitting room attendant, a customer on a wheelchair with Latin appearance, drove up to her and asked something. Elena did not understand what he said, and answered: "I'm sorry, I don't understand". The customer asked, "You don't understand my accent?" Elena replied: "No, I don't speak English." But since she actually spoke to him in English at that time, Elena believes customer probably decided that he was being deceived. He shouted that Elena was lying and started to allege he was discriminated by her. He made a scandal, called the manager, demanded that Elena must be fired.

23. Elena was very upset. She was afraid that there is a danger to be fired. But the coworkers, on the contrary, tried to reassure her, saying that she was not to blame for anything, and customers could be different.

24. After the scandal, managers tried to create a safe working environment for Elena (and at the same time for themselves). They didn't send her working on such positions where she needed to talk to customers. Elena rarely worked as a

fitting room attendant and never in the jewelry department. She was making returns, and organization of the merchandise on shelves.

25. The managers were satisfied with Elena's work and that there were no problems with the customers because of her. They often praised Elena and even the customers thanked her for the order in the department. Elena really liked this job.

26. According to the terms of the current employment contract of 2019 year, 3 months after the start of employment, Walmart provided full-time employees with good medical insurance. Elena expected to get it because she worked 35-37 hours a week. But after 3 months it turned out that she was employed as a part-time associate, and therefore she could receive insurance only after a year. Without insurance, she could not be able to continue medical treatment. Therefore, 07/05/19/ Elena quit.

27. In August 2019, Elena, and her daughter Anastasiia moved to San Antonio, Texas.

28. In San Antonio, TX Elena was unable to find a job due to limited English, and the nearest Walmart retail store was too far from her place of residence.

29. In February 2020, Elena and her daughter Anastasiia moved to The Woodlands, Texas.

30. This time, when choosing an apartment complex, Elena specifically looked them to be located next to the Walmart store. She believed that Walmart was the only company where she will be able to be hired and was going to work there until her retirement. Elena and her daughter moved at 1481 Sawdust Rd, Apt 131, The Woodlands, TX 77380.

31. In early March of 2020, Elena and her daughter Anastasiia came to Walmart #602 at 1025 Sawdust Rd, Spring, TX, 77380 for a job interview. However, when the manager they met at the front end found out that Elena had limited English, she immediately rudely pushed her aside, saying: “I can’t take you to any position because you don’t know English.”. Elena did not consider its important enough, because she decided to talk to someone else next time.

32. In March 2020, a pandemic began. Recruitment has stopped. Elena was not employed.

33. In August 2021, Elena and her daughter Anastasiia moved to Daphne, Alabama.

34. When choosing apartments, Elena looked for them to be located near Walmart store. She and her daughter moved to 500 Jackson St, Apt 1504A, Daphne, AL 36526.

**EMPLOYMENT WITH DEFENDANT AT THE RETAIL STORE NO.934**

35. At the end of September 2021, Elena passed the entry test to work at Walmart, and then received a phone call from the personnel department of the local Walmart store. On the phone, Elena was offered to work at the back of the store on the night shift, because she has limited English.

36. Elena was asking to get a position at the Apparel department, because she had a successful experience of working there.

37. 27/09/21 Elena started her employment at Walmart #934 at 27520 US Highway 98, Daphne, AL 36526 at the full-time position at Apparel department, with schedule 2pm to 11pm.

38. During the recruitment process at Walmart, as all other new employees, Elena was asked what name she would like to write on her badge. It is possible to choose any – legal name, nickname, any letters. Discovering the real name of an employee is difficult or impossible. In addition, badges are often turned upside down due to their design, especially at breaks and lunches and it is not clear who is in front of you.

39. Due to COVID, all employees and most of the customers wore masks. This created difficulties in communication since lips movements were not visible.

40. According to name badges, Elena's supervisors were team leaders Stephanie, Tanisha, and Martha. And Donald was the coach.

41. 09/28/21 before starting a workday, Elena was checking the temperature at the wellness station. An associate was standing next to her and discussing her with a wellness associate: "She doesn't understand English at all. How is she going to work?"

42. A few days later, the same situation happened at lunch in a break room. Elena was talking on the phone in Russian, and at that time one associate was discussing her with another worker, pointing her finger at Elena. Then she asked Elena: "Where are you from?" Elena replied: "From Russia." The worker replied that judging by the speech, she thought that Elena was from Germany.

43. The store had not enough employees and was short staffed.

44. Elena's coworkers at the Apparel department Kay, Marilyn and Beverly were regularly sent to work in the electronic department or to the wellness station or to be a hostess by the door. Elena very often worked in Apparel alone.

45. From the first day of employment, many customers approached Elena with a lot of questions. Most of them spoke a lot and quickly. They not only wanted to know where items located, but also explained why they needed it. Elena gives an example:

"A customer instead of just asking, "Where are the candles?" tells the whole story about she and her husband have recently moved, and she decorates the house, and she decorated the back yard this way, and the front yard differently. For a long time, she could not decide which candles to put on the threshold, but now she finally realized that she needed not electric ones, but real ones. And she would be very happy if I would tell her where they are."

Elena could not always understand such long stories. And she had no one to help in the department. Customers were not satisfied with Elena's simple answers, it seems like they wanted to talk. Elena was forced to answer: "I'm sorry, I don't speak English."

46. Upon discovering that Elena does not speak English, about 30% of the customers were saying: "Oh, sorry!", 40% looked at her with surprise and just left, and the remaining 30% expressed their dissatisfaction, laughed, or mocked her. Most often, dissatisfied customers simply asked: "What are you doing here if you don't speak English?" Some asked where she was from, and then began to discuss Russia and Putin. Elena felt uncomfortable because often they didn't look welcoming. Many were seriously angry, shouting offensive words to Elena, calling her stupid and offering her to leave back to the home country. This happened once or twice a day every day. Elena is giving examples:

a) "Once a customer, discovered that I do not speak English, followed me for about 15 minutes and explained: "People like you should not work here. Why did you get hired here? This is nonsense! You must speak English to help me. And if you don't speak and can't explain anything to me, go back to your country and live there!"

b) "Three teenagers approached me when I was folding T-shirts, asked something, I did not understand, and said: "I do not speak English." They laughed in response and started shouting different words in Spanish. Apparently, they thought that I was Hispanic."

c) "One day a mother with an adult daughter, passing by me, asked: "Where are your pajamas here?" I answered: "Near the fitting room." The daughter laughed at my accent. A few days later daughter came with friends, and they specifically found me in the department to make fun. They took things from the hangers, put them on and ran around the department, around me wearing them. Then they threw everything on the floor, threw things off the shelves and tables and left with a laugh."

d) "The male buyer asked me where he could find sheets. And I thought he was looking for shirts. For me, these words sound almost the same, just like a t-shirt, shorts, short, especially if they are not pronounced clearly. I showed where the shirts were, and the man became furious and started yelling: "Sheet, sheet, for the bed!" He showed with his hands how to lay the sheet on the bed and even jumped up and down. A female customer passing by took him by the arm and said softly, "Come, I'll show you." And took him out of the department."

e) "One customer asked me questions, and I almost understood her, but not all. I decided to use the Google translator on my phone to help her. And the woman suddenly screams: "You don't understand anything, and even got into the phone while talking to me! Russian bitch! I'll complain to your boss!"

f) "Once a woman came up to me, asked me something and then she realized I speak Russian. We started talking. When she found out that I did not speak English, she was very surprised, asked: "What are you doing here then?", and then said: "Without English, there is nothing to do in Alabama at all!"

g) "One day, while answering a question from a customer, out of excitement, I could not find English words to say and accidentally began to speak Russian. And the customer suddenly screamed: "What?! Talk to me in English! Or go back to your Moscow!"

h) "Another day, a tall male customer of strong physique, approached me. He was incredibly large both in height and in width. I was frightened by the very sight of him and cringed all over. He asked something in a loud voice. I didn't understand and said softly, "I don't speak English." The customer shouted: "Why don't you speak? Where are you from?" I said that I am from

Russia, and he answered: "Oh, Russia is cool! I love Russia! I love Putin!" When he left, I breathed a sigh of relief and thought that I was very lucky this time."

47. After 2 weeks of work in such unsafe conditions, Elena shuddered at every customer who approached her, was afraid of them, tried to hide somewhere deeper in the department and work there.

48. Elena successfully worked with organizing a new merchandise on shelves, sorted out returns, zoned in the clothing department. She could set up displays, check and change price tags. She did all the work related to the merchandise very well, problems only appeared during communication with customers.

49. Elena's communication with the coworkers also was problematic.

a) Front end managers Tatiana and some other ordered Elena to work at the front doors of the store as a hostess - to greet customers, answer questions, check purchase receipts. Elena refused such job assignments because she thought it was unsafe. Managers got angry, called one of the other supervisors on the phone, complained about her and left annoyed, then was defiantly turning away when met Elena on their way.

b) Shortly after these incidents, some coworkers, for example at the customer service, began to look at Elena with condemnation.

- c) Once the manager Scott literally yelled at Elena because she did not have the keys to the jewelry department.
- d) Some store employees laughed at Elena when she did not understand them and talked to her as if she was intellectually disabled or shouted as if she was deaf. For example, about the fact that associates can't use carts, Elena was told literally by all the employees of the Apparel department, some of them more than once.
- e) Job related instructions was also handed out to Elena by everyone - both team leaders and ordinary associates. At first, everyone wanted to check whether she did what she was instructed to do correctly and were surprised when they saw that everything was in order.
- f) When Elena asked the coworkers to speak more slowly, no one but the team leader Martha, even thought to do it. And when they used a telephone translator, showed obvious discontent and sighing heavily at the same time.
- g) Sometimes, in a conversation with the coworkers, Elena switched from English to Russian. Some coworkers answered with a smile: "English, please," while others were clearly annoyed.

50. On 10/20/21, team leader Stephanie left Elena a bunch of keys to the jewelry department before heading home without explaining how to use them. When it was announced over the radio, that the customer in a jewelry needed help,

Elena immediately went to the department. The man began to describe his problem in detail, Elena did not understand, told him about it, and he suddenly shouted loudly at her: "Why did you come if you don't understand? What are you doing here?" From his subsequent speech, Elena could only make out: fucking, fire and horrible. Taking advantage of the fact that Elena could not answer anything, the customer insulted her, waved his hands in front of her face and was so angry that Elena thought he could hit her. Other shoppers passing by turned round. Elena apologized and went away closer to the fitting room. Later, a coworker Trinity told Elena that this customer asked for her name, accused Elena of not arriving immediately but only 45 minutes later, and he would file a complaint. Elena realized that she could not only be insulted, but also slandered, and she would not be able to defend herself, because she does not speak English.

51. Elena decided to seek help from her coach Donald. On the evening of 10/20/21, she and her daughter Anastasiia as an interpreter, approached him and told that customers were attacking Elena because she doesn't not know English. Elena asked to be transferred to the night shift because there will be no customers. Donald replied that he also had customers being rude to him, and that he can't move Elena into the night shift until he finds a replacement for her. This may take two weeks. But Donald promised to talk to the night manager that evening and see what could be done. Anastasiia also did not always understand the new local

accent, so she recorded the conversation on her phone to re-listen later if something will be unclear.

52. While Elena was waiting for a solution of the problem, ridicule and bullying from customers and employees continued. Due to the lack of staff in the Apparel department, conditions were such that customers approached her with questions very often:

- a) The fitting room was always closed, there was not a single mirror in the department, and the customers were unhappy with this. The only thing Elena could offer them was to look for a mirror in the Home Department. Almost everyone liked the idea, but some were even more annoyed.
- b) The merchandise in the department (especially in the men's and children's sections) was placed randomly, and not according to merchandising. Buyers and online shoppers couldn't find anything on their own and spilled all their dissatisfaction on Elena. Usually she was silent in response, because when the customers discovered that Elena doesn't not speak English, they screamed and resented even more.

53. One day, Elena tried to oppose the practice of placing high-value shoes to where there is a lower price tag. In response, team leader Tanisha and associate Leah turned to look at her in surprise, then looked at each other with a question:

"Did she say something?" laughed together and left. On the other day, team leader Stephanie explained that it was not necessary to place out the merchandise correctly.

54. Elena was forbidden to use shopping carts for work, but other associates could use them. They loaded a full cart and drove it to where they need it to be, and Elena had to carry a few things on herself several times.

55. When Elena was called to the customer service desk over the radio for pick up merchandise returns, she was referred to as an "apparel department associate" even though they saw who was working that day and knew her name. Other workers were called by name, Elena - never.

56. Sometimes coach Donald came to the fitting room, took a picture of the sign that was saying about fitting room closure, removed it and opened the fitting room without warning anyone. After that, Elena found there the old clothes and shoes of the customers, who simply changed into new clothes and left, because no one was watching the fitting room. Customers could not only put things on themselves, but also put them in a bag. Elena was afraid that she would be responsible for the theft due to such management actions and, if she noticed that the fitting room was open, she worked nearby. From her work experience at Walmart #2571 she knew that leaving a fitting room open was strictly forbidden

because it facilitated theft and shoplifting. If there were not enough workers, then the managers themselves monitored the fitting room. At Walmart #934 in Daphne, managers thought the apparel department could be left without any supervision, and then Apparel department employees found dirty shoes in shoeboxes and empty watch and jewelry cases on the shelves.

57. 10/11/21 Elena accidentally discovered that her Walmart training courses are expired to be completed, including the one about a workplace safety. Elena assumed that they were not needed to be completed, because she passed them already in Washington State. At the current place of employment, no one told Elena, about courses needed to be done in a timely manner.

58. Elena was in a state of constant stress. English seemed to be completely out of her head. To the questions of the customers, she no longer answered "I don't speak English," but "I don't understand English," because she really stopped understanding them. Elena was terribly afraid of people. Even outside of work, it seemed that people around her could attack her because she did not understand them. For example, once Elena and her daughter came to the laundry. The daughter went to change money, and Elena stood by the washing machine and loaded the linen. Suddenly a woman came up to her and asked something. Elena was frightened, she shrank all over, as someone hit her, and shouted: "Nastya, Nastya, come here quickly, she is asking me something!"

59. Such state of stress led to the fact that Elena again received an increased muscle tone and developed spasms of the limbs - the disease returned from which Elena was cured in Washington state.

60. At the end of November, team leader Stephanie told Elena that she has to work in the jewelry department too. Elena tried to explain that there is too much communication with customers needed, as well as the ability to work at the register. In response, Stephanie did a 15-minute training for Elena about how to work with register and confused herself during the training. Elena asked her daughter Anastasiia to tell Stephanie how she was being harassed by the customers for not knowing English. Stephanie said, "Well, you really don't know English, that's why they treat you like that," but she promised to talk to Donald herself soon. But over the next week there was no change.

61. 02/12/21 Elena and her daughter approached Donald again to remind him that she had been waiting for the transfer to the night shift already for 6 weeks. He responded by asking, "Does she still want to go overnight?" All this time, while Elena endured humiliation, he was not even going to do anything. He said to Elena, that she is not the only one begging to work at night, but there are not enough people. And Elena again had to tell him about her problems because she has limited English. But only when Elena said that this is the fact of discrimination, Donald heard what the conversation is about. He promised to talk to the general

manager of the store and resolve the situation tomorrow, because today was the last day of his work as Elena's supervisor.

62. 03/12/21 Donald had a day off. He was not going to do anything again.

63. 04/12/21 Elena and her daughter approached to her new supervisor Susan. She made a phone call to Donald. To her question: did he contact the manager of the night shift? Donald answered "No." Susan promised that in 24 hours Elena would work on a night schedule, but at the same time she asked Anastasiia: "There is associates overnight as well, is she going to have issue with those?"

64. 05/12/21 Elena was transferred to the night schedule from 10pm to 7am. During the registration for the night shift, new manager Crystal offered Elena a choice: does she want to wait and work in a day shift until 12/19/21 for her pay rate to match the night rate of \$14.7, or she agrees to work at night with the daytime pay rate of \$12 until 12/19/21. Elena chose the second option only to avoid harassment from customers.

65. Elena's night shift supervisors were now Sarah, Crystal, Carmen, and Bobby. But the team leaders worked day shift from Apparel department Stephanie, Marta and Tanisha also gave her job assignments.

66. A few days after Elena's transition to the night shift, front-end manager Erika, passing by her, contemptuously reproached her for "wanting an extra dollar." Elena believed that the other workers were also thinking bad about her.

- a) Nobody was hired for the clothing department, and therefore those with whom Elena worked during the day condemned her for leaving the department at a busy time before the holiday season.
- b) When Elena started working near by the fitting room in the evening, someone from the customer service came and literally threw a cart with returns to her so that she could sort them out. The other night shift associates - Erika, Britani, and Tammy, never sorted out the returns, they only sorted out the freight.
- c) Team leader Stephanie, who was no longer Elena's supervisor, but continued to give her instructions when she got to work around 5am, made Elena work on the back of the store. She did not give other workers such tasks. They were only unpacking the freight.
- d) Those with whom Elena worked at night looked at her unwelcomely and at first discussed her, standing next to her, because they thought that she did not understand English at all.
- e) Once Elena came to the Craft department to find necessary merchandise there. Associate Linda and another associate were working at Craft that day. They told

Elena to pick up her freight, which was mistakenly brought to them. Elena nodded but continued to search for items she needs - she wanted to pick up the freight on the way back. Associates laughed aloud after that, because they thought Elena did not understand them.

f) Often Elena was not brought pallets with freight, and she had to bring them herself or wait, and then hurry to sort merchandise out. For other workers, at least part of the load was always ready for work at the beginning of the shift. If Elena told someone that she had no freight, they answered her: "It is blocked by another freight, it is impossible to bring it." But in reality, Elena found her freight blocked only 3-4 times during the entire time of employment. Usually the freight was available, and Elena took it to the department herself.

67. But anyway, it became much calmer to work on the night shift - Elena saw the customers only 2 hours per shift. For all the time she worked at night (more than three months), there were only two dissatisfied customers. First time in the morning, the buyer asked how Elena could work in the store if she does not know the language. The second time, also in the morning, the buyer could not find anyone with the keys to the jewelry, ran around Elena and angrily shouted something incomprehensible.

68. Elena did her job well because she liked it. At night, no one interfered with her work. She was sorting the freight, zoned, and even sorted returns if there was time. At first, Elena worked together with another associate, but then the need for this disappeared, because she coped on her own. The night managers Sarah and Carmen and even some of the night associates praised Elena.

69. In mid-December 2021, Elena found out that she was scheduled to work on New Year's Eve 12/31/21.

70. In Russia, New Year is the most important holiday of the year. Because of its special significance, the Russian Orthodox Church has repeatedly wanted to equate it with a religious one. During the Soviet era, Christmas was removed from the calendar, but its traditions were too strong to be suppressed. They were transferred to the New Year, while also adding the ancient Slavic pagan rites. Therefore, for many Russians, including Elena as an adherent of Russian Folk Christianity, the New Year is a religious holiday with many traditions: decorated Christmas tree, gifts, Ded Moroz with the Snegurochka, a festive table with traditional unchangeable dishes, the same movies and TV shows every year, mass festivities and skiing from the ice mountain on the decorated city's squares. On New Year's Eve, it is a traditional to say Goodbye to the old year with gratitude and to welcome the new year with hope, and then to rest for about 10 days. 95.4% of Russians believe that it is necessary to not to sleep until the morning that Eve.

And every Russian sacredly believes: " The way you meet the new year is the way you will spend it." Therefore, everyone does their best to spend New Year's Eve in the company of family or best friends. Elena all her life (during about 50 years) both in Russia and abroad has observed all these New Year traditions and considers them religious practices that she cannot refuse. Therefore, when she realized that she would have to be next to people who treat her unkindly on New Year's Eve, she was ready to quit her job. But she thought that she might be given an unpaid day off and around 16/12/21 made a request for the day off using the Walmart application.

71. On 12/17/21 Manager Crystal rejected Elena's request for unpaid time off, without knowing the reason of that request.

72. 12/18/21 Elena, together with her daughter Anastasiia Mukhina as an interpreter, approached Crystal to explain the reason for the request. Crystal immediately said she that she is not approving days off for that time for anyone, in order to be fair with everyone. Elena tried to explain that New Year for her is like Christmas for Americans. She was ready to work another day, saying that she had little work to do. But Crystal did not want to listen to anything, she simply repeated: "Most of my team requested New Year's off; I don't approve days off for New Year; it's my decision and I know I don't approve New Year's day off."

73. Sometime around December 20th, an associate of day shift at Apparel department Kay, told Elena that Kay's manager had approved her request for 4 days off to celebrate Christmas with relatives in another state. And Elena's manager did not want to give her even one day to celebrate the New Year with her daughter.

74. On 12/23/21, Elena's daughter Anastasiia, on behalf of Elena, filed a complaint with the Walmart Ethics Department over the phone that Elena was subjected to discrimination and harassment in the workplace. They promised to call back next week. But no one ever called back. Anastasiia herself made phone calls to know the status of the complaint and provided additional details that were required.

75. According to Walmart attendance policy, if an employee does not come to work during a holiday, but warns about it in advance, employee will receive 2 penalty points. 12/31/21. Elena made a notification about her absence by the phone, didn't show up for work and got 2 penalty points.

76. Despite the fact, that Walmart Ethics Department guarantees confidentiality, after the complaint, the attitude of the coworkers towards Elena changed markedly:

- a) For several days in a row, night shift associates came to Apparel department pretending to be interested in the merchandise, examined Elena, and left.
- b) Some associates began to ask Elena questions, and if she did not understand, they tried long and hard to explain what they needed, in all ways: they shouted so that she could hear better, gesticulated.
- c) Those who were previously friendly with Elena suddenly began to turn away when they met. And vice versa: those who never even said hello suddenly began to communicate with her.
- d) When manager Sarah was on the schedule, Elena almost always had the freight to work with, and on the shifts when Crystal was scheduled, Elena had to bring the freight herself.
- e) Elena was no longer laughed at, but the atmosphere was tense.

77. On 01/26/22, a month after the appeal, the Walmart Ethics Department conducted a telephone interview with Elena. At the very beginning of the conversation, there was a problem with translators. Elena heard that the first one did not translate her words accurately and was rude to her. The second one translated as slowly as if he was using a dictionary. And when the third one joined, the investigator did not mute the microphone and it was heard how he was discussing Elena with an interpreter. "You are already the third" - clearly hinting at

the inadequacy of Elena, investigator said with a grin. "Really? No one fit her?" - the translator answered ironically, but she translated very well. After this incident, Elena realized that there would be no help from the service that should have protected her, and she was very upset. For 30 minutes during the interview, she answered questions and talked about acts of discrimination and harassment in the workplace, not even hoping that this would somehow change the situation.

78. In January, Elena's spasms of the limbs again intensified. After one such spasm around 01/20/22 there was an injury: a pinched nerve on the right leg and as a result - a drop foot. Elena was limping heavily, falling while walking and even while standing still, but continued to work, hoping that it would go away on its own. She adapted to walk leaning on a cart, but it was exceedingly difficult for her to carry a freight on a jack.

79. On 02/01/2022 Elena visited Dr. Robert A. McKnight, MD. He prescribed medicine and said to follow up in a week. He recommended limiting activity to just sitting and, if walking, no more than 20 feet 1-2 times an hour.

80. Elena could not afford to stay at home, but she notified team leader Jordan, showed him a paper with prescribed guidelines and explained that she could not bring and take the freight herself. Nothing has changed. The freight was not brought to her.

81. Elena, together with her daughter as an interpreter, approached manager Sarah and said that Elena could not bring the freight because she could not walk. Sarah replied that Elena should never bring freight at all. This should be done by those who unload the trucks on the back of the store.

82. Elena stopped bringing the freight herself, and if there was none, she was engaged in zoning and sorting out returns. However, day shift team leader Stephanie was unhappy with this and argued that Elena should bring the freight herself. Arriving at work early in the morning, Stephanie brought a freight that was supposed to be sorted during the night shift and told Elena to make her job done. Elena completed sorting of almost all freight for 1.5 hours.

83. At the end of February, freight began to be brought to Elena on a regular basis. She was finally given the opportunity to work. Elena could easily work at a job that she really liked. She tried not to pay attention to how she was treated in the team.

84. A week after the first visit to the doctor, he referred her to a neurologist for examination. But since the appointment was only for April, he advised Elena to visit an orthopedist. 02/15/22. At the Baldwin Bone & Joint PC clinic, Elena had an x-ray and additional examinations were prescribed: MRI and nerve testing. Enrollment for these procedures was available after a long time. Elena learned to

walk, raising her leg high so as not to fall. She resigned herself to the fact that this disease could remain for life.

85. 02/24/22 Russia invaded Ukraine and this terrible war began. Elena was afraid that now she would be treated even worse, but this did not happen - everything was still the same.

86. In February 2022, Elena's coworker on the day shift, Kay, told her that she was going to transfer to another Walmart, and anyone who works for 6 months can do it.

87. 03/03/22 Elena and her daughter bought a house in Foley, AL. She decided to transfer to the local Walmart in the hope that on the new place she would not be harassed by coworkers and customers, and everything would be as good as in the state of Washington. It was only necessary to be patient a little more - six months would expire on March 27.

88. 03/20/22 Elena was working at the children's department when an associate she had never seen before approached her. Elena did not pay attention to her name, because everything happened unexpectedly. The worker asked a question about clothes, Elena did not understand what exactly she wanted and said: "I don't understand English." "Where are you from?" the worker asked rudely. "From Russia," Elena replied. The associate asked dismissively: "Russian?" And

then she began to say something with anger. Elena understood only “Russia”, “Ukraine”, “invasion” and “fuck you”. Then she turned around and walked away freaked out. Elena cannot tell exactly what she said because Elena doesn't speak English.

89. Elena realized that harassment would never end. Even if she transfers to another store, there will also be someone there who will harass her. Elena took a few days off at the expense of her PTO and PPTO to think about the situation. Elena realized that she could no longer tolerate harassment. And she decided that the only salvation was to quit the job.

90. Elena had never come to the store anymore. 03/24/22 her daughter Anastasiia brought Elena's business cellphone back to Walmart and said that Elena had quit. She was officially terminated on 04/04/22.

91. 04/18/22 Anastasiia called to the Walmart Ethics Department and was told that the complaint was closed, all information is confidential and could not be disclosed to any of the parties.

92. About a month after Elena discharged, her leg fully recovered without any treatment.

93. Elena is currently self-employed. She is managing her own eBay store and works online from home because she is still afraid of people and tries to avoid them.

### **CAUSE OF ACTION I.**

#### **(National origin discrimination in violation of Title VII of the Civil Rights Act of 1964.)**

94. Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

95. Under 42 U.S. Code § 2000e-2 (a)(1) Plaintiff alleges Defendant to be involved in an unlawful employment practice such as discrimination of Elena Mukhina the Plaintiff on the basis of national origin (Russian). That could be proven throughout the narrative of preceding facts.

96. 42 U.S. Code § 2000e-2(c) makes it an unlawful employment practice to classify or refuse to refer for employment any individual because of national origin. Plaintiff alleges Defendant was involved in such a practice. Because Elena was offered to be employed on the back of the store unloading trucks at night. Despite the fact, that she was asking to have a position on the sales floor at the Apparel department, because Elena had a successful experience working at the same company on the same position before. Also, as Elena discovered later, Defendant had been short-staffed in Apparel department for a long time already,

therefore Plaintiff believes that Defendant made such an employment offer not because of the unavailability of a requested position, but because Elena's national origin and her linguistic characteristics.

97. EEOC Regulation 29 CFR § 1606.6(b) gives a confirmation, that denying employment opportunities because of an individual's foreign accent or inability to communicate well in English consider discriminatory on the basis of national origin. Such a labor organization practice is common for Defendant because Elena had an experience of that in the other Walmart Inc. retail store in Texas as well. She was refused from employment by front end manager because of limited English. Therefore, Plaintiff alleges Defendant approves such a practice, actively uses it, consider acceptable, even though it is violating the Title VII.

98. In accordance with EEOC Regulation 29 CFR § 1606.7, Speak-English-only rules would consider an act of discrimination on the basis of national origin, if employer didn't notify employees about its existence. Despite the fact, that Defendant never did such a notification, Elena was forced to speak only English on a workplace by customers and associates of the store. She was trying to hide her native language as a national origin characteristic, in order to not be harassed and not to suffer offensive behavior. Such rules created an atmosphere of inferiority, isolation, and intimidation for Plaintiff, and led to a discriminatory working

environment. Therefore, Elena alleges Defendant was violating the Title VII, by allowing such a rule to be applied to a Plaintiff.

99. 42 U.S. Code § 2000e-2(d) makes it an unlawful employment practice for any employer to discriminate against any individual because of national origin in admission to any program established to provide apprenticeship or other training. Managers and HR employees of the store were failed to warn Elena about completing necessary on-the-job training programs including the one about health safety. Elena found them expired to be done long ago. Plaintiff believes it was made intentionally, based on supposed beliefs from members of management about Elena's inability to finish training and on her English fluency level that considers Plaintiff's national origin characteristic. Despite the fact, that Elena was previously completed the same job training programs at the other Walmart Store with no difficulties and also, completed full course of online classes for a Certificate of Accounting Level I at Lone Star College, TX. Therefore, she had enough English knowledge to finish those job training. Plaintiff alleges Defendant to be involved in unlawful employment practice of discrimination in admission to job training program that is not only illegal in accordance with Title VII, but also could lead to a serious injury on the workplace.

100. Although Elena has a limited English, she believes that high English proficiency was not job related for the position she was employed and was not

consistent with business necessity. That could be proven by Elena's successful completion of job assignments relevant to the position of an Apparel associate. Elena tried to do a proper merchandise organization and prevent shoplifting practices. Also, Elena never had any penalties during her work history with Walmart store No.934. Except the one received during the New Year Eve that Plaintiff considers discriminatory.

101. According to EEOC Regulation 29 CFR § 1606.8(a), harassment on the basis of national origin is a violation of Title VII. Harassment can be proven with created hostile and offensive work environment in accordance with EEOC Regulation 29 CFR § 1606.8(b). Plaintiff alleges Defendant to be actively involved and had a liability of such hostile environment created. Because on the place of Elena's employment, she was a subject to offensive jokes, ridicule, intimidation, aggressive gestures, undue attention, physical assaults attempt, constant unwelcome questions about her identity from employees and non-employees on the basis of national origin. Plaintiff gives plenty examples of harassment on the workplace in the preceding facts. Also, Elena was subject to micromanagement from her direct and indirect supervisors as well as from non-supervisors. Because of Elena's language characteristics, she was perceived as a person, that could not protect herself and defend her rights for a harassment free work environment.

102. Supervisors from other departments of the store repeatedly forced Elena to work on positions, where she could be subjected to harassment. By doing that, supervisors were actively involved in creating a hostile work environment. It happened despite that fact, that supervisors knew about Plaintiff's inability to communicate with customers due to her national origin. Therefore, Elena alleging such actions from members of management were made intentionally.

103. Plaintiff also focuses attention on company's polices and rules made inside of a particular Walmart retail store No.934. She alleges, that hostile environment created was unavoidable for people protected by Title VII by number of reasons:

- a) Not following merchandise placement rules by members of management, leaded to unsatisfied, confused, angry customers at the self-service retail store Walmart. Therefore, Plaintiff was a subject to undue attention and the following offence.
- b) Due to the name badge design, it is hard to report about offensive behavior from associates and therefore to stop such behavior.
- c) On job training about Walmart non-discrimination policy is not complex and does not fully explain each protected class in detail. In particular, it does not explain linguistic characteristics as a part of national origin, which consider protected under the Title VII.

d) Based on the ignorance of Plaintiff's complaints by members of management, Elena alleging there is a lack of proper training for management positions about non-discrimination policy at Walmart store. In particular, the training that would explain by what signs can one recognize discrimination occurred, so that it would be possible to take necessary actions against it.

e) Particular Walmart store No.934 does not have a non-discrimination policy visually available for customers, so people may be unaware of such a policy and harass employees of a store.

f) Walmart Inc. retail stores as well as one where Plaintiff was employee, has a high employee turnover rate, where new associates may be unaware of rules, polices and regulations. Defendant's hiring process, where new employee allowed start work without finishing necessary training makes it even harder to maintain a harassment free workplace environment, because no proper training is given.

g) Walmart Inc. retail stores are also share common characteristic with places exposed to a workplace harassment, according to *Select Task Force on the Study of Harassment in the Workplace 2016*:

“Decentralized workplaces, marked by limited communication between organizational levels, where managers may feel (or may actually be) unaccountable for their behavior and may act outside the bounds of workplace rules.”

Plaintiff alleges, that managers of the particular Walmart Store considered themselves unaccountable for discrimination happened. Decentralized workplaces, by beliefs of the Plaintiff, also can lead to difficulties during a report of a harassment, due to inability of the lowest level employee to reach out to a higher levels of managers.

104. Plaintiff alleges, that harassing behavior was severe and frequent enough that it created a hostile work environment. As a result, Elena was intimidated, had an emotional distress and anxiety. Working environment for a Plaintiff was led to the resumption of a chronic disease of an increased muscle tone. Elena received an injury. Later after Plaintiff was constructively discharged and stayed unemployed, drop foot injury has passed without any medical treatment. Plaintiff believes that injury received was directly connected to a harassment and hostile working environment.

105. Plaintiff alleges, that harassment occurred was repetitive and severe enough to be viewed as objectively hostile and abusive to a reasonable person. Damage resulting from hostile work environment considered by Plaintiff as a serious threat to her physical and mental health.

106. According to EEOC Regulations 29 CFR § 1606.8(e) and 29 CFR § 1606.8(d), if employer knows about acts of harassment on the basis of national

origin made by non-employees or employees, employer has a liability, unless corrective actions were made. During the harassment occurred, several members of management were aware of the situation, because Plaintiff made timely and reasonable complaint to supervisors. No corrective actions were made, and harassment continued. Moreover, supervisors ignored Elena's complaints and forced her to tolerate harassment, because she is in fault for not knowing English. By manager's opinion, because Plaintiff doesn't speak English, she would be unable to protect herself, therefore she can be deceived, defamed, and does not deserve to be protected by Defendant. The fact that Elena was finally transferred overnight with no extra conditions, mentioned by supervisor to be met, proves that transfer could be done long before hostile environment led to serious consequences. Therefore, Plaintiff alleges Defendant had a full liability and was actively involved into the creation of hostile work environment for Elena, which would consider a discrimination on the basis of national origin as a violation of Title VII.

107. While working with Defendant, Plaintiff faced with several situations, where she was treated less favorably, comparing to other employees. Along with all other discriminatory actions of Defendant described above, Elena believes it happened because of her national origin in violation of Title VII.

108. Even when Plaintiff submitted a formal complaint with Walmart Ethics Department about discrimination, Elena alleges that investigator who performed the interview discussed Elena with the interpreter. Because of that, Plaintiff alleges that Defendant does not provide any remedies inside of the company and does not have any enforcement of its non-discrimination policy available for protection of employees.

109. Consequences of Plaintiff's employment in a hostile work environment are reaching such a degree of severity, that Elena is unable to be employed anymore because of physical condition and mental anguish. Plaintiff is currently self-employed, and not anymore going to seek for employment opportunity in order to be safe. Despite that fact, that Elena with a good faith expected to be working at Walmart much longer, at least until retirement, because she really enjoyed the job.

110. Plaintiff alleges that unlawful employment practices were undertaken by Defendant with malice, deceit or with reckless indifference to Elena's federally protected rights.

## **CAUSE OF ACTION II.**

**(Discrimination on the basis of religious beliefs in violation of Title VII of the Civil Rights Act of 1964.)**

111. Under 42 U.S. Code § 2000e-2 (a)(1) Plaintiff alleges Defendant to be involved in an unlawful employment practice such as discrimination of Elena Mukhina the Plaintiff on the basis of her religious beliefs (Russian Folk Christianity). That could be proven by actions made by Defendant, that Elena described throughout the narrative of preceding facts.

112. The manager declined Elena's request for day off without knowing the reason for that request. She explained such decision that way: "I don't approve days off for the New Year; I can't approve everybody and it's not fair to approve someone", manager repeated several times during the conversation. Elena's supervisor created such a rule for providing Unpaid Time Off same for everyone and was not going to make any exceptions for people, like Elena, who may require accommodation and may be protected by the law. As a result, Plaintiff as a member of religious protected class was negatively affected. Therefore, Elena alleges Defendant to be involved in unlawful employment practice such as a disparate impact that according to the 42 U.S. Code § 2000e-2(k)(1)(A) is illegal and consider to be a discrimination on religious beliefs.

113. EEOC Guidelines 29 CFR § 1605.2 clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, about employer to be obligated to accommodate the religious practices of employees, unless the employer demonstrates that accommodation would result in undue hardship on the conduct

of its business. Elena was not provided with necessary religious accommodation upon request.

114. The true reason for the Plaintiff's request for accommodation was directly connected with Elena's religious beliefs with no doubt. Elena acted with a good faith to be able to follow her religious practice, that she does throughout her life and cannot refuse. After the denial of the request, Elena attempted to explain the important cause of the request in person to show its significance. Plaintiff actively offered alternative changes in the schedule to adapt it to the needs of the Defendant, but no option was accepted by her supervisor.

115. The manager refused to approve requested day off. She made this decision single-handedly, with reckless indifference to Elena's federally protected rights and convinced Elena of incontrovertibility of such a decision by any other member of management.

116. Plaintiff alleges that Defendant would not have any undue hardship because of her request. Elena explained, that even during holiday time at the night shift there was not too much freight for her to do. Only one night shift was requested. Also, Elena requested Unpaid Time Off, so the Defendant would not suffer from direct monetary expenses.

117. The refusal to provide to Plaintiff an accommodation was so significant for Elena that she was ready for constructive discharge in order to be able to follow religious practices. As a result, Elena was forced to get 2 penalty points, but has completed her religious practice.

118. Therefore, Plaintiff alleges that Defendant actively involved into unlawful employment practice of discrimination on the basis of religion beliefs in violation of Title VII.

### **CAUSE OF ACTION III.**

**(Retaliation based on engagement in protected activity under Title VII of the Civil Rights Act of 1964, 42 U.S. Code § 2000e-3(a))**

119. According to 42 U.S. Code § 2000e-3(a), Plaintiff alleges Defendant to be involved in an unlawful employment practice such as discrimination of Elena Mukhina the Plaintiff because she was opposing unlawful employment practices by Title VII performed by Defendant against her. Elena believed she experienced discrimination, and while trying to exercise her rights for a harassment-free and discrimination-free working environment, she faced retaliation.

120. Adverse action of retaliation made by Defendant was a Plaintiff's wrongful termination in form of a constructive discharge. Supervisors and associates made Elena's employment impossible to continue, and she was forced to leave her job. Hostile working environment was worsened after every time Elena

made a complaint or achieved corrective measurements to be done in order to protect her rights. That could be proven throughout the narrative of preceding facts.

121. When Elena denied accepting job assignments, that would expose her to the risk of harassment, supervisors become angry because of that and aggressively have discussed situation over the phone with other supervisors, presumably complaining about Elena's poor job performance.

122. After Elena's first complaint about harassment was ignored, Elena insisted to be transferred to the night shift in order to protect her rights for harassment free work environment. Elena alleges, that during her conversation about the transfer with a new manager of Apparel department, manager asked a question, which considered by Elena as a threat and a warning of future harassment from associates of the night shift. It means that manager considered harassment from associates as an acceptable conduct. And she was only wondering if Elena will have any issues with that.

123. After Elena was finally transferred overnight, she faced with unwelcomed behavior, condemnation and badmouth behind her back from associates. Micromanagement intensified, now Elena was under control of a greater number of employees. Day shift managers of Apparel department made

Elena to do more job in response to Elena's transfer, even though they were not supposed to give her any job assignments. Also, night shift associates and supervisors were ignoring Elena on a new position and showed disapproval of Plaintiff's transfer by not bringing her a freight from the back with merchandise to sort out as they did for other department's associates. Because of that, Elena forced to bring pallets with freight herself and did extra job.

124. Also, Plaintiff believes, that rejected request for New Year Eve day off was not only discriminatory, but retaliatory at the same time, as it was made intentionally to show disapproval with Elena's request to be transferred overnight. Elena believes that manager would have thought one request for Plaintiff was enough and another requested day off - its already too much. Almost everybody in the store was showing disapproval to Elena's actions, that she believes were made in accordance with the law.

125. Finally Plaintiff believes that faced retaliation after submitting a formal complaint with the Walmart Ethics Department about discrimination and harassment on the workplace. After that, regardless of promised confidentiality, Plaintiff received undue attention from associates, change of attitude from coworkers to her, tense atmosphere against her. Freight for the night shift was continually not brought to the Plaintiff. Even after Elena's injury, regardless of medical guidelines, prescribed to Elena by her doctor, coworkers continued to not

to bring her freight. It happened even despite the fact, that Elena's direct supervisor confirmed – Elena should never bring the freight herself, that is a responsibility of associates, who was working on the back of the store.

126. Therefore, Plaintiff alleges that actions of her coworkers and supervisors from allegations stated above, were made intentionally in the response of Elena exercising her rights and should be consider retaliatory, unlawful, made in violation of Title VII. Because of such actions Plaintiff was forced to be constructively discharged.

## **V. PRAYER FOR RELIEF.**

WHEREFORE, Plaintiff Elena Mukhina respectfully requests that the Court enter judgment in her favor and against the Defendant, and award the following relief, to the fullest extent allowed by law:

- a) enjoin Defendant from subjecting employees to discrimination and harassment based on national origin and religious beliefs;
- b) enjoin Defendant from retaliating against employees who engage in activity protected under Title VII;

c) order Defendant to develop and implement new appropriate and effective measures designed to prevent discrimination, harassment, and retaliation, including but not limited to policies and training for employees and managers, or to expand existing policies and training;

d) order Defendant to develop new appropriate and effective measures to receive complaints of discrimination, harassment, and retaliation as well as a process for investigating such complaints, or expand existing measures;

e) award compensatory damages to fully compensate Plaintiff for her physical and mental injuries caused by Defendant discriminatory, harassing, and retaliatory conduct, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981 or in the amount of \$300000 or above;

f) award punitive damages with intention to punish the Defendant for applying unlawful employment practices with recklessness, malice, or deceit on the workplace and to deter others from acting in a similar manner;

g) award front pay damages in the amount of \$395136 as if Plaintiff would be employed with Defendant at least until retirement;

h) award a monetary equivalent of a cost of a future mental health treatment in the amount of \$10000;

- i) award compensatory damages for costs and disbursements in this action;
- j) any such further relief as justice allows.

Elley 09/12/2022

(Signature and date), pro se

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